
By: **Delegates Murray, Barkley, Benson, Bromwell, Bronrott, Burns, G. Clagett, Costa, Cryor, Donoghue, Dumais, Feldman, Goldwater, Harrison, Haynes, Heller, Hogan, Holmes, Kaiser, King, Lee, Madaleno, Mandel, McDonough, Montgomery, Nathan-Pulliam, Oaks, Patterson, Petzold, Ramirez, Rawlings, Ross, Simmons, Smigiel, Stern, Taylor, F. Turner, V. Turner, Vaughn, and Weldon**

Introduced and read first time: February 6, 2003
Assigned to: Health and Government Operations

A BILL ENTITLED

1 AN ACT concerning

2 **Nursing Homes - Third Party Liability Audits**

3 FOR the purpose of requiring the Health Care Quality Account to be funded by
4 certain State general funds; requiring the Department of Health and Mental
5 Hygiene to pay certain State general funds to the Comptroller; altering the
6 purposes for which the Account may be used; requiring the Department to
7 conduct third party liability audits of nursing homes that receive payment from
8 the Medical Assistance Program; requiring that the audits be conducted at a
9 certain frequency; authorizing the Department to contract with an entity to
10 perform the audits; requiring the Department to use certain procurement
11 procedures when making certain contracts; requiring audit contracts to include
12 certain items; prohibiting audit contractors from being compensated in a certain
13 manner; requiring audit contractors to complete certain reports on a certain
14 frequency; requiring certain reports to include certain items; authorizing the
15 Secretary to establish certain appeals boards; designating the membership of
16 the appeals boards; authorizing a nursing home to appeal the final report of a
17 third party liability audit; requiring State general funds recovered through third
18 party liability audits to be deposited into the Account; authorizing the
19 Department to adopt regulations regarding third party liability audits;
20 requiring the Department of Health and Mental Hygiene and the Department of
21 Human Resources to conduct a study of the Medical Assistance Program
22 eligibility process for nursing home residents; requiring the Department of
23 Health and Mental Hygiene and the Department of Human Resources to submit
24 a report to the Governor and certain committees of the General Assembly on or
25 before a certain date; and generally relating to third party liability audits of
26 nursing homes.

27 BY repealing and reenacting, with amendments,
28 Article - Health - General
29 Section 19-1407(a) and (b)

1 Annotated Code of Maryland
2 (2000 Replacement Volume and 2002 Supplement)

3 BY adding to
4 Article - Health - General
5 Section 19-14A-01 through 19-14A-06, inclusive, to be under the new subtitle
6 "Subtitle 14A. Third Party Liability Audits of Nursing Homes"
7 Annotated Code of Maryland
8 (2000 Replacement Volume and 2002 Supplement)

9 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
10 MARYLAND, That the Laws of Maryland read as follows:

11 **Article - Health - General**

12 19-1407.

13 (a) (1) There is a Health Care Quality Account established in the
14 Department.

15 (2) The Account shall be funded by:

16 (I) civil money penalties paid by nursing homes [and];

17 (II) other penalties that the Office of Health Care Quality may
18 assess; AND

19 (III) STATE GENERAL FUNDS RECOVERED FROM A THIRD PARTY
20 LIABILITY AUDIT OF A NURSING HOME, AS AUTHORIZED UNDER SUBTITLE 14A OF
21 THIS ARTICLE.

22 (3) The Department shall pay TO THE COMPTROLLER OF THE STATE:

23 (I) all penalties collected under this title; AND

24 (II) ALL STATE GENERAL FUNDS RECOVERED FROM A THIRD PARTY
25 LIABILITY AUDIT OF A NURSING HOME UNDER SUBTITLE 14A OF THIS ARTICLE [to
26 the Comptroller of the State].

27 (4) The Comptroller shall distribute the funds collected under this title
28 to the Health Care Quality Account.

29 (5) The Account is a continuing nonlapsing fund, not subject to § 7-302 of
30 the State Finance and Procurement Article.

31 (6) Any unspent portions of the Account may not be transferred or
32 reverted to the General Fund of the State, but shall remain in the Account to be used
33 for the purposes specified in this section.

- 1 (b) The Health Care Quality Account shall be used for:
- 2 (1) training[.];
- 3 (2) grant awards[.];
- 4 (3) demonstration projects[.];
- 5 (4) ENCOURAGEMENT OF INNOVATIVE PRACTICES;
- 6 (5) LONG-TERM CARE WORKFORCE DEVELOPMENT;
- 7 (6) TESTING THE USE OF NEW TECHNOLOGIES;
- 8 (7) IMPROVING THE SURVEY AND ENFORCEMENT PROCESS; or
- 9 (8) other purposes designed to improve the quality of care.

10 SUBTITLE 14A. THIRD PARTY LIABILITY AUDITS OF NURSING HOMES.
11 19-14A-01.

12 (A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS
13 INDICATED.

14 (B) "BOARD" MEANS AN APPEAL BOARD ESTABLISHED BY THE SECRETARY
15 UNDER THIS SUBTITLE.

16 (C) "ERROR RATE" MEANS ONE LESS THE AMOUNT OF THE FINAL REPORTS
17 DIVIDED BY THE AMOUNT OF THE INITIAL REPORTS IN THE CONTRACT PERIOD.

18 (D) "FINAL REPORT" MEANS THE CONTRACTOR REPORT ISSUED TO THE
19 DEPARTMENT AND A NURSING HOME STATING THE TOTAL AMOUNT DUE TO THE
20 DEPARTMENT AS A RESULT OF THE COMPLETED AUDIT.

21 (E) "INITIAL REPORT" MEANS THE CONTRACTOR REPORT ISSUED TO THE
22 PROVIDER STATING THE CONTRACTOR'S PROPOSED ADJUSTMENTS.

23 (F) "NURSING HOME" HAS THE MEANING STATED IN § 19-1401(E) OF THIS
24 TITLE.

25 (G) (1) "THIRD PARTY" MEANS ANY INDIVIDUAL, ENTITY, OR PROGRAM THAT
26 IS OR MAY BE LIABLE TO PAY ALL OR PART OF THE MEDICAL COST OF ANY MEDICAL
27 ASSISTANCE FURNISHED TO A RECIPIENT UNDER THE MEDICAL ASSISTANCE
28 PROGRAM.

29 (2) "THIRD PARTY" INCLUDES PRIVATE HEALTH INSURANCE,
30 EMPLOYMENT-RELATED HEALTH INSURANCE, MEDICAL SUPPORT FROM ABSENT
31 PARENTS, AUTOMOBILE INSURANCE, COURT JUDGMENTS OR SETTLEMENTS FROM A
32 LIABILITY INSURER, STATE WORKERS' COMPENSATION, FIRST PARTY
33 PROBATE-ESTATE RECOVERIES, OR ANY FEDERAL PROGRAMS.

1 (H) "THIRD PARTY LIABILITY AUDIT" MEANS A FINANCIAL REVIEW OF
2 MEDICAL ASSISTANCE PAYMENTS TO A PROVIDER TO ASCERTAIN THE LEGAL
3 LIABILITY OF THIRD PARTIES TO PAY FOR CARE AND SERVICES AVAILABLE UNDER
4 THE MEDICAL ASSISTANCE PROGRAM.

5 19-14A-02.

6 (A) THE DEPARTMENT SHALL CONDUCT A THIRD PARTY LIABILITY AUDIT OF
7 EACH NURSING HOME THAT RECEIVES PAYMENT FROM THE MEDICAL ASSISTANCE
8 PROGRAM.

9 (B) A THIRD PARTY LIABILITY AUDIT SHALL BE CONDUCTED AT LEAST ONCE
10 EVERY 2 YEARS.

11 (C) THE DEPARTMENT MAY CONTRACT WITH AN ENTITY TO PERFORM THIRD
12 PARTY LIABILITY AUDITS.

13 (D) IN CONTRACTING WITH AN ENTITY TO PERFORM THIRD PARTY LIABILITY
14 AUDITS, THE DEPARTMENT SHALL USE STANDARD PROCUREMENT PROCEDURES.

15 19-14A-03.

16 (A) A CONTRACT FOR THE PERFORMANCE OF A THIRD PARTY LIABILITY AUDIT
17 SHALL INCLUDE:

18 (1) A BUDGET TO COVER THE ADMINISTRATIVE EXPENSES OF THE
19 CONTRACTOR;

20 (2) AN ESTIMATE OF THE AMOUNT OF GENERAL FUNDS THE
21 DEPARTMENT ANTICIPATES WILL BE RECOVERED THROUGH THE AUDIT; AND

22 (3) A PENALTY TO THE VENDOR IF THE ERROR RATE EXCEEDS 20% AT
23 THE CONCLUSION OF THE CONTRACT PERIOD.

24 (B) A THIRD PARTY LIABILITY CONTRACTOR MAY NOT BE COMPENSATED
25 SOLELY:

26 (1) ON A CONTINGENCY BASIS; OR

27 (2) BY A PERCENTAGE OF THE FUNDS RECOVERED THROUGH THE
28 AUDIT.

29 (C) EACH CONTRACTOR SHALL COMPLETE AUDIT STATUS REPORTS FOR EACH
30 AUDIT UNDERTAKEN BY THE CONTRACTOR.

31 (D) EACH AUDIT STATUS REPORT SHALL:

32 (1) BE SUBMITTED TO THE DEPARTMENT ON A QUARTERLY BASIS; AND

33 (2) AT A MINIMUM INCLUDE:

1 (I) THE NUMBERS OF REPORTS ISSUED; AND

2 (II) THE DOLLAR AMOUNTS OF BOTH INITIAL AND FINAL REPORTS.

3 19-14A-04.

4 (A) THE SECRETARY MAY:

5 (1) ESTABLISH ONE OR MORE APPEAL BOARDS FOR THE PURPOSES OF
6 THIS SECTION; AND

7 (2) DESIGNATE THE JURISDICTION OF A BOARD.

8 (B) A BOARD SHALL CONSIST OF THREE MEMBERS:

9 (1) TWO OF WHOM SHALL BE APPOINTED BY THE SECRETARY; AND

10 (2) ONE OF WHOM SHALL BE CHOSEN BY THE APPOINTED MEMBERS.

11 (C) OF THE TWO APPOINTED MEMBERS:

12 (1) ONE SHALL BE A REPRESENTATIVE OF THE NURSING HOME
13 INDUSTRY WHO IS KNOWLEDGEABLE IN MEDICARE AND MEDICAL ASSISTANCE
14 BILLING PROCEDURES; AND

15 (2) ONE SHALL BE AN INDIVIDUAL WHO IS EMPLOYED BY THIS STATE
16 AND KNOWLEDGEABLE IN MEDICARE AND MEDICAL ASSISTANCE BILLING
17 PROCEDURES AND WHO DOES NOT DIRECTLY PARTICIPATE IN THE THIRD PARTY
18 LIABILITY AUDITS.

19 (D) A NURSING HOME MAY APPEAL THE RESULTS OF A FINAL REPORT OF A
20 THIRD PARTY LIABILITY AUDIT BY FILING WRITTEN NOTICE WITH THE APPROPRIATE
21 APPEAL BOARD WITHIN 30 DAYS AFTER THE NURSING HOME RECEIVES THE FINAL
22 REPORT FROM THE DEPARTMENT OR ITS AGENT.

23 19-14A-05.

24 ANY GENERAL FUNDS RECOVERED THROUGH A THIRD PARTY LIABILITY AUDIT
25 OF A NURSING HOME THAT ARE IN EXCESS OF THE CONTRACT AMOUNT SHALL BE
26 DEPOSITED INTO THE HEALTH CARE QUALITY ACCOUNT ESTABLISHED UNDER §
27 19-1407 OF THIS TITLE.

28 19-14A-06.

29 THE DEPARTMENT MAY ADOPT RULES AND REGULATIONS TO CARRY OUT THE
30 PROVISIONS OF THIS SUBTITLE.

31 SECTION 2. AND BE IT FURTHER ENACTED, That:

1 (a) The Department of Health and Mental Hygiene and the Department of
2 Human Resources shall conduct a study of the Medical Assistance Program eligibility
3 determination process.

4 (b) The study shall:

5 (1) describe the Medical Assistance Program eligibility determination
6 process and subsequent changes in Medical Assistance Program enrollee status for
7 nursing home residents;

8 (2) calculate the average time period for determining changes in the
9 financial and eligibility status of nursing home residents; and

10 (3) identify any barriers or delays in:

11 (i) the processing of Medical Assistance Program eligibility
12 determination; and

13 (ii) the communication of subsequent changes in Medical
14 Assistance Program enrollee status to a nursing home.

15 (c) On or before October 1, 2003, the Department of Health and Mental
16 Hygiene and the Department of Human Resources shall submit a report to the
17 Governor and, in accordance with § 2-1246 of the State Government Article, to the
18 Senate Finance Committee and the House Health and Government Operations
19 Committee on the results of the study.

20 (d) The report shall include recommendations for:

21 (1) addressing any identified barriers or delays;

22 (2) streamlining the eligibility determination process for nursing home
23 residents; and

24 (3) improving communication between the Department of Health and
25 Mental Hygiene, the Department of Human Resources, and nursing homes regarding
26 the eligibility of nursing home residents under the Medical Assistance Program and
27 any changes in eligibility status.

28 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
29 October 1, 2003.